

# EXHIBIT I

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3                   IN RE: PROCESSED EGG PRODUCTS : MDL No. 2002  
4                   ANTITRUST LITIGATION               : No. 08-MD-02002

5                   -----:  
6                   THIS DOCUMENT APPLIES TO:       :  
7                   ALL ACTIONS                       :

8                   -----:  
9                   IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS  
10                   TWENTY-NINTH JUDICIAL DISTRICT

11                   ASSOCIATED WHOLESALE GROCERS,   : Case No.  
12                   INC., et al.,                       : 10-cv-2171  
13                   Plaintiffs,                       :  
14                   v.                                   :  
15                   UNITED EGG PRODUCERS, et al.,   :  
16                   Defendants.                       :

17                   \*\* HIGHLY CONFIDENTIAL \*\*

18                   Wednesday, April 23, 2014

19                   Videotaped deposition of KAREN  
20                   BROWN, taken at the offices of Pepper  
21                   Hamilton LLP, 600 Fourteenth Street, N.W.,  
22                   Washington, D.C. 20005, beginning at 10:54  
23                   a.m., before LINDA ROSSI RIOS, a Federally  
24                   Approved RPR, CCR and Notary Public.

1

2 A. No.

3 Q. Are you currently employed, Ms.

4 Brown?

5 A. No.

6 Q. What was your last employment?

7 A. Food Marketing Institute. I  
8 retired on January 30, 2009.

9 Q. How long were you employed by  
10 the Food Marketing Institute?

11 A. 40 years.

12 Q. And what was your position at  
13 FMI when you retired?

14 A. I was a senior vice president.

15 Q. What were your responsibilities  
16 in that role as senior vice president?

17 A. I had an eclectic portfolio  
18 that included marketing and communications,  
19 food safety membership, issues management,  
20 crisis management.

21 Q. Did it include animal welfare?

22 A. As an issue, yes.

23 Q. How long had you been in -- did  
24 you hold the role of senior vice president at  
25 FMI?

1

2                   THE WITNESS: My knowledge about  
3                   the retail food industry came from  
4                   many sources.

5 BY MS. SUMNER:

6                   Q.        What were --

7                   A.        Research, education, colleagues  
8 in -- within FMI, visiting stores, talking  
9 with members about issues that they were  
10 concerned about, that FMI could help them  
11 with.

12                  Q.        Through all of those things and  
13 your contact with FMI's members, did you gain  
14 an understanding as to how their businesses  
15 operated?

16                  A.        Individually, no. In general,  
17 yes.

18                  Q.        Through the course of your  
19 employment at FMI and the contact with the  
20 members, did you gain an understanding of the  
21 concerns that they had about what was going  
22 on in the industry at various points in time?

23                  MR. RANDALL: Objection to form.

24                  MR. WILDERS: And also vague.

25 BY MS. SUMNER:

1

2 Q. You can go ahead and answer the  
3 question. They're going to make objections  
4 to preserve them for the record, but unless  
5 your counsel instructs you not to answer, you  
6 need to answer the question.

7 A. Can you repeat the question?

8 Q. Sure. Through the course of  
9 your employment at FMI and the contact that  
10 you had with the members that you just  
11 described during that employment, did you  
12 gain an understanding of the concerns they  
13 had about what was going on in the industry?

14 MR. RANDALL: Objection to form.

15 MR. WILDERS: Same objection.

16 THE WITNESS: Mainly the  
17 concerns that they shared with me were  
18 concerns that related to their  
19 customers.

20 BY MS. SUMNER:

21 Q. Did you gain an understanding  
22 of their concerns about animal welfare?

23 MR. RANDALL: Objection to form.

24 MR. WILDERS: Objection. Vague.

25 THE WITNESS: From the

1

2                   standpoint as an issue that was  
3                   affecting their customers, yes.

4 BY MS. SUMNER:

5                   Q.        What about as an issue that was  
6 affecting their businesses?

7                   MR. WILDERS: Same objection.

8                   THE WITNESS: They were most  
9                   concerned about how it was affecting  
10                  their customers.

11 BY MS. SUMNER:

12                  Q.        Why?

13                  A.        They were not -- they were not  
14 experiencing -- they had some letters from  
15 PETA that they had received, and that  
16 concerned them as to how to answer it, and  
17 how it would affect what PETA's actions may  
18 have contributed to their own public image.

19                  Q.        And when you say "to their own  
20 public image," you mean the public image of  
21 your members?

22                  MR. WILDERS: Objection.

23                  Leading.

24                  THE WITNESS: Repeat the  
25 question?

1

2 BY MS. SUMNER:

3 Q. You used the phrase --

4 A. I'm trying to understand your  
5 context.

6 Q. You said -- testified that they  
7 were concerned -- that your members were  
8 concerned about how PETA's actions may have  
9 contributed to their own public image.

10 A. I didn't say contribute.

11 Q. You did say contribute.

12 A. I said affected. Might affect.

13 MR. RANDALL: Objection to form.

14 MR. WILDERS: Badgering. And  
15 argumentative.

16 MS. SUMNER: If we could just  
17 have one objection for all, it would  
18 be helpful just to speed this along  
19 because we have limited time with this  
20 witness today and I don't think we  
21 want to keep her here unnecessarily.

22 BY MS. SUMNER:

23 Q. I'm just going to read back one  
24 of your answers that the court reporter took  
25 down, and if you want to modify it or change

1

2 it, let me know, I'm just trying to  
3 understand it.

4 I asked you the question -- you  
5 said they were most concerned about how it  
6 was affecting their customers. I asked you  
7 the question why and your response was, they  
8 had received some letters from PETA that they  
9 had received and that concerned them as to  
10 how to answer it and how it would affect what  
11 PETA's actions may have contributed to their  
12 own public image.

13 My question to you is, when you  
14 say "their own public image," you're talking  
15 about the public image of your members?

16 MR. WILDERS: Objection.

17 Leading.

18 THE WITNESS: Correct. The  
19 industry as a whole.

20 BY MS. SUMNER:

21 Q. When you say "the industry,"  
22 what industry are you referring to?

23 A. I'm talking about the  
24 supermarket industry.

25 Q. Let me finish the question or

1

2 animal welfare?

3 MR. WILDERS: Objection.

4 Assumes facts not in evidence, and

5 vague as to members.

6 BY MS. SUMNER:

7 A. They didn't really express  
8 their views. They were looking to FMI to  
9 help them approach the issue in a way that  
10 would enhance or improve the humane handling  
11 of farm animals.

12 Q. And what was your understanding  
13 as to why those members were looking to FMI  
14 to help them approach the animal welfare  
15 issue?

16 MR. WILDERS: Vague. Assumes  
17 facts not in evidence.

18 THE WITNESS: They had an  
19 example from the quick serve industry  
20 where the animal rights organizations  
21 were attacking them publicly and  
22 asking them to take specific actions.

23 The response of some of the members of  
24 the quick serve industry was to come  
25 up with specific guidelines that they

1  
2       as an individual company, I'm not  
3       talking about the supermarket industry  
4       now, I'm talking about the quick serve  
5       restaurant industry, to come up with  
6       specific actions that would enhance  
7       the humane handling of farm animals,  
8       particularly in the area of space  
9       allocation. Because there were many  
10      different proposals or requirements by  
11      individual companies in the quick  
12      serve industry, the supermarket  
13      industry at that time was under the  
14      radar, and they felt that it would be  
15      a better approach to try to get ahead  
16      of the issue in a way that would  
17      improve humane handling and also give  
18      them a story they could tell their  
19      customers about what they were doing  
20      in the area of humane handling.

21      BY MS. SUMNER:

22           Q.     Why did FMI's members want to  
23      get ahead of the issue?

24           MR. WILDERS: Objection. Calls  
25      for the witness to speculate.

1

2                   THE WITNESS: I think it's good  
3                   business to get ahead of an issue.

4 BY MS. SUMNER:

5                   Q.        Do you have an understanding of  
6 why they wanted to get ahead of the issue?

7                   A.        They certainly wanted to be  
8 able to have an approach that was going to  
9 enhance the humane handling of animals and to  
10 be able to publicize what their approach was  
11 going to be so that their customers would  
12 know what their involvement was. There were  
13 public campaigns being undertaken, executed  
14 against the members of the quick serve  
15 industry by PETA and other animal rights  
16 organizations, and that's a very  
17 uncomfortable position for a company to be  
18 in, and it makes it difficult for them to  
19 tell their own story and play catch up.

20                   Q.        And was that what was happening  
21 to your members?

22                   MR. WILDERS: Objection.

23                   THE WITNESS: Our members were  
24 not at that point on the -- being  
25 attacked.

1

2 BY MS. SUMNER:

3 Q. But they wanted to avoid that?

4 MR. WILDERS: Objection. Calls  
5 for speculation.

6 THE WITNESS: Yes.

7 BY MS. SUMNER:

8 Q. You mentioned before, you said  
9 "particularly in the area of space  
10 allocation."

11 A. Correct.

12 Q. What was it about space  
13 allocation that made that a focus for your  
14 members?

15 A. It wasn't that it was the  
16 focus. But it was the -- it was the -- one  
17 of the issues that was front and center from  
18 the standpoint of the animal rights  
19 organizations. They were concerned about  
20 gestation stalls with pregnant sows. They  
21 were concerned about space in the egg laying  
22 industry from the standpoint of the cages  
23 that the chickens were being raised in.

24 Q. Does FMI have an animal welfare  
25 program, Ms. Brown?

1

2 years ago.

3 Q. But what do you recall sitting

4 here today?

5 A. There was a meeting of members

6 which is not uncommon, and I was at the

7 meeting, and three of the companies'

8 representatives asked me if I would look into

9 developing a policy and a program to address

10 animal welfare.

11 Q. Who were those three?

12 A. Kroger, Safeway and Albertsons.

13 Q. Did they make that request to

14 you privately or in the company of other FMI

15 members?

16 A. We were having lunch, the four

17 of us.

18 Q. Do you recall who the

19 representatives were specifically from those

20 three companies who you had lunch with, who

21 were the individual people?

22 A. Yes.

23 Q. Who were they?

24 A. Jonathan Mayes, Lynn Marmer,

25 and Ertharin Cousin.

1

2 Q. Jonathan Mayes is with which  
3 company?

4 A. Safeway.

5 Q. Ms. Marmer?

6 A. Kroger.

7 Q. And is it Ms. Cousin?

8 A. Ertharin Cousin, Albertsons.

9 Q. What do you recall about that  
10 conversation?

11 A. That they asked me if I would  
12 look into FMI developing a program on animal  
13 welfare that would include a program and a  
14 policy.

15 Q. Did they tell you why they were  
16 interested in having FMI look into developing  
17 a policy and program about animal welfare at  
18 that time?

19 A. They were very -- sorry.  
20 Sorry.

21 They were very concerned about  
22 the public media attention and the manner in  
23 which it was being used against individual  
24 companies in the quick serve industry.

25 Q. Were they concerned that it

1

2 review these notes, and my question is, are  
3 these notes an accurate description of what  
4 was discussed at this meeting?

5 A. I don't recall the specifics of  
6 our conversation, but I think that this is a  
7 representation of a very good approach.

8 Q. The first sentence reads, "Our  
9 hope is that no individual company will deal  
10 with PETA, but instead we will all work with  
11 FMI to develop an industry position that we  
12 can all adopt."

13 Is that a topic that was  
14 discussed at this meeting?

15 A. Yes.

16 Q. What was your understanding as  
17 to why the retailers at this meeting did not  
18 want to deal with PETA themselves?

19 MR. RANDALL: Objection. Vague.

20 THE WITNESS: It was not  
21 uncommon for the members to use the  
22 trade association's expertise and help  
23 in developing a response to an issue  
24 that they all had to deal with. So  
25 you could have an industry position

1  
2       and then -- so that was a very common  
3       practice within the association,  
4       within all associations. It's one of  
5       the reasons why associations are so  
6       valuable to their individual members.  
7       Their members are spending their time  
8       running their businesses, and the  
9       association expertise in the areas of  
10       public affairs and issues management  
11       were very helpful, are very helpful in  
12       developing a position that all of the  
13       members can then use as opposed to  
14       having to go about that work  
15       themselves and take that time away  
16       from their business.

17       BY MS. SUMNER:

18       Q.       So is it fair to say that these  
19       members were looking to FMI to develop a  
20       single industry approach to the animal  
21       welfare issues they were concerned about?

22                    MR. WILDERS: Objection.

23                    MR. RANDALL: Objection.

24                    Leading.

25       BY MS. SUMNER:

1

2 Q. You can go ahead and answer the  
3 question.

4 A. Repeat the question.

5 Q. I said so is it fair to say  
6 that these members were looking to FMI to  
7 develop a single industry approach to the  
8 animal welfare issues they were concerned  
9 about?

10 MR. RANDALL: Same objection.

11 THE WITNESS: They wanted FMI to  
12 work with them on developing an  
13 industry position.

14 BY MS. SUMNER:

15 Q. That they could all adopt?

16 MR. WILDERS: Objection.

17 THE WITNESS: That they could  
18 use as they needed.

19 MR. WILDERS: Misstates the  
20 testimony.

21 COURT REPORTER: That they could  
22 use --

23 THE WITNESS: -- as they needed.

24 BY MS. SUMNER:

25 Q. Was there a benefit to these

1

2 Q. And what is that understanding?

3 MR. WILDERS: Asked and

4 answered.

5 MR. RANDALL: Objection to form.

6 MR. WILDERS: Assumes facts not

7 in evidence. And argumentative.

8 THE WITNESS: That they could

9 avoid having any company singled out

10 specifically by activist groups,

11 individual companies don't have to

12 duplicate efforts. And that would

13 also apply to the producer community.

14 And individual companies are not

15 leveraged by the actions of one.

16 BY MS. SUMNER:

17 Q. What do you mean by that, that

18 individual companies are not leveraged by the

19 actions of one?

20 A. Company A did, if PETA comes

21 to -- which they did with the quick serve

22 industry, company A did X, you know, what are

23 you going to do about it, are you going to do

24 better, are you going to do less. Trying to

25 up the game. That is a common tactic on the

1

2 part of activist organizations. That is what  
3 they were trying -- that was one of the  
4 things they were trying to avoid.

5 Instead, FMI dealt with the  
6 activist organizations, and FMI on behalf of  
7 its members, described what our position was,  
8 what our policy was, and the efforts that we  
9 had under way to increase the humane handling  
10 for farm animals.

11 Q. At the time you had that  
12 meeting in late November of 2000 with  
13 Safeway, Albertsons and Kroger, prior to that  
14 meeting, had FMI been approached by any  
15 producer organization regarding its animal  
16 welfare program?

17 A. I don't recall.

18 - - -

19 (Exhibit Brown-5, E-mail chain,  
20 Bates FMI-001078 & FMI-001079, was  
21 marked for identification.)

22 - - -

23 BY MS. SUMNER:

24 Q. Ms. Brown, I'm going to show  
25 you a document that's been marked as Brown-5.

1

2 group.

3 Do you see that? I'm in the  
4 middle of her e-mail.

5 MR. GREEN: Read the whole  
6 document.

7 THE WITNESS: Okay. Okay.

8 Okay. Okay. Which is the paragraph  
9 you're focusing on now?

10 BY MS. SUMNER:

11 Q. About halfway down her e-mail  
12 she writes, I explained that there are two  
13 purposes for having an industry-wide group.

14 Do you see that?

15 A. Yes.

16 Q. One of the purposes she says  
17 is, "...to not allow advocacy groups to pit  
18 one retailer against another..."

19 Do you see that?

20 A. Okay.

21 Q. Is that -- did you understand  
22 that to be the concept that you just  
23 explained to me about the concern about the  
24 animal activists leveraging one company  
25 against another I think are the words you

1

2 used?

3 A. I suppose you could use all of  
4 those terms.

5 Q. Did you have a different  
6 understanding as to what she meant here by  
7 not allowing advocacy groups to pit one  
8 retailer against another?

9 A. No.

10 MR. RANDALL: Objection.

11 Speculation.

12 THE WITNESS: One of the things  
13 that was happening with PETA is they  
14 would write to company A and say  
15 company B is doing blah, blah, blah,  
16 blah. And company B had no clue their  
17 name was being used by PETA, because  
18 PETA does not have been to responsible  
19 for its accuracy or honesty. So then  
20 that was the kind of shenanigan that  
21 was going on. That's part of it. So  
22 if a company can say, when they get  
23 these kinds of letters, we're working  
24 with the Food Marketing Institute on  
25 this issue, please contact them on our

1

2                   behalf, then it nullifies to some  
3                   extent those kinds of shenanigans that  
4                   go on among the activist  
5                   organizations.

6 BY MS. SUMNER:

7                   Q.       The second purpose she lists  
8                   there is to move the industry standards so  
9                   that if there are costs, they are shared  
10                  across the industry. Do you see that?

11                  A.       I see that.

12                  Q.       What did you understand her to  
13                  mean when she wrote that one of the purposes  
14                  of having an industry-wide group was to move  
15                  the industry standards so that if there are  
16                  costs, they are shared across the industry?

17                  A.       I probably didn't understand  
18                  what she was talking about.

19                  Q.       Sitting here today, do you have  
20                  an understanding of what she meant?

21                  A.       No. I mean, I know in general  
22                  what she may be trying to imply, but  
23                  specifically I don't know.

24                  Q.       And what is it in general that  
25                  you know that she may be trying to imply?

1

2 Q. Did other FMI members look to  
3 FMI to represent them on matters related to  
4 animal welfare?

5 A. Yes.

6 Q. I'd like you to look back to  
7 Brown-3. This is your presentation again.  
8 If you just want to keep that out, we're  
9 going to use that throughout the course of  
10 the deposition kind of to walk us through the  
11 time sequence.

12 A. Okay.

13 Q. If you look at the page that  
14 ends with the Bates number 3055. Again, this  
15 is the December 2000 slide. It notes, "FMI  
16 forms a member committee."

17 Do you see that?

18 A. Yes.

19 Q. Did FMI form a member committee  
20 related to animal welfare?

21 A. Yes.

22 Q. And when was that committee  
23 formed?

24 A. I don't recall.

25 Q. Was it formed by December 2000?

1

2           A.        We were probably in the -- no,  
3        I don't -- I think we were in the process of  
4        beginning to form a member committee because  
5        the member committee had more representation  
6        than just the original companies that raised  
7        the issue with FMI.

8           Q.        Who was on that member  
9        committee?

10          A.        I don't recall.

11          Q.        Why was the member committee  
12        formed?

13          A.        Any issue that FMI was involved  
14        in which affected our members, we had a  
15        member committee as advice of counsel and to  
16        give us direction and guidance.

17          Q.        So the role of the member  
18        committee was to give FMI direction and  
19        guidance on animal welfare issues?

20          A.        React to or advise us on  
21        whether we -- what we were developing was  
22        going in the right direction.

23          Q.        Did you have a role vis-a-vis  
24        the member committee?

25          A.        Yes.

1

2 Q. What was that role?

3 A. I managed the committee.

4 Q. Did the committee hold  
5 meetings?

6 A. They held one or two meetings,  
7 but the rest of their involvement was by  
8 memos and phone calls, conference calls.

9 Q. Were minutes of the meetings  
10 and conference calls kept?

11 A. Minutes of meetings would have  
12 been kept. They may have been -- the result  
13 of them may have been not minutes, per se,  
14 but actions coming out of it that needed to  
15 be taken. Conference calls, notes were  
16 probably made, but I have no idea --

17 Q. Did you keep --

18 A. -- specifically.

19 Q. Did you keep those minutes and  
20 notes in your role as senior vice president  
21 of FMI?

22 A. I had files, voluminous files,  
23 yes.

24 Q. Did you keep, though, like a  
25 set of official minutes of these meetings?

1

2 A. No, not that I recall.

3 Q. Was a list of member committee  
4 members maintained by FMI?

5 A. Yes.

6 Q. And who maintained that list of  
7 committee members?

8 A. There were changes in the  
9 committee. There were companies that got  
10 involved later on in the process. There were  
11 changes of staff within the member companies.  
12 The list would have been kept within my  
13 office.

14 Q. Do you recall what those lists  
15 looked like or what form they were in?

16 A. No.

17 Q. If I wanted to understand over  
18 time who sat on this member committee at any  
19 given point in time, would those lists be the  
20 best thing to look to?

21 A. If they exist, yes.

22 Q. Do you know if they exist?

23 A. I don't know anything that has  
24 happened at FMI after January 30, 2009.

25 Q. You did create them at some

1

2 point in time?

3 A. Yeah, we had -- yes, we had a  
4 list of people that we corresponded with  
5 regularly on this issue.

6 Q. The next bullet point on this  
7 December 2000 slide says, "FMI begins  
8 meetings with producer community."

9 A. Correct.

10 Q. Did that -- those meetings  
11 begin in or around December of 2000?

12 A. Probably not because -- I don't  
13 recall specifically.

14 Q. What was the purpose of these  
15 meetings?

16 A. To -- the first initial meeting  
17 was to let the producer community know what  
18 our approach was going to be. And there were  
19 individual meetings with producer  
20 organizations to talk with them specifically  
21 about recommendations that were being made by  
22 our expert panel. And the expert panel  
23 consisted of veterinarians, animal scientists  
24 and an animal welfare advocate who was not  
25 part of any of the activist organizations.

1

2 Q. Was United Egg Producers one of  
3 the producer organizations with whom FMI  
4 met --

5 A. Yes.

6 Q. -- in this effort?

7 A. Yes.

8 Q. Do you recall who -- did you  
9 attend those meetings with United Egg  
10 Producers?

11 A. Yes.

12 Q. And who did you meet with at  
13 United Egg Producers?

14 A. Al Pope. Gene what's his face,  
15 I can't remember his last name.

16 Q. Gregory?

17 A. Gregory. Ken Klippen. There  
18 may have been other people, but I don't  
19 recall.

20 Q. Were individual egg producers  
21 included in those meetings?

22 A. Sometimes.

23 Q. Do you recall any specific egg  
24 producers?

25 A. No.

1

2 Q. Did the board approve the  
3 policy and program unanimously?

4 A. Yes. All 81 of them.

5 Q. Look at the program. The first  
6 component of the program or the first bullet  
7 point is "Develop retailer expectations for  
8 use with suppliers."

9 A. Correct.

10 Q. Do you see that?

11 A. Yes.

12 Q. Why did FMI's board want to  
13 develop retailer expectations for use with  
14 suppliers?

15 A. The expectations were that the  
16 animals would be raised, transported and  
17 processed, i.e. slaughtered, in an  
18 environment that was safe and secure and free  
19 from abuse and neglect. Those were the  
20 expectations.

21 Q. My question is, why were  
22 expectations or what did it mean to develop  
23 expectations for use with suppliers? How  
24 were they to be used with suppliers? What  
25 was intended there?

1

2           A.        We explained to our suppliers  
3        that we hope that they would develop animal  
4        handling guidelines that would provide  
5        through the process of raising, transporting  
6        and processing animals for food in an  
7        environment that was safe and free from abuse  
8        and neglect.

9           Q.        The second component of this  
10      board approved program reads, worked with  
11      respected animal -- "Work with respected  
12      animal welfare experts and organizations."

13                Do you see that?

14           A.        Yes.

15           Q.        Did FMI form a panel of animal  
16      welfare experts?

17           A.        Yes.

18           Q.        What was the role of that  
19      expert panel?

20           A.        That panel, since retailers and  
21      certainly not the FMI staff have any  
22      scientific standing to develop any specific  
23      ideas about how to humanely handle farm  
24      animals, part of our program was to put  
25      together a panel of people who did know, and

1

2       they were animal scientists and veterinarians  
3       primarily.

4           Q.       Did FMI and its members rely on  
5       the expertise of that panel in developing  
6       FMI's animal welfare program?

7           A.       FMI's program was as it's  
8       stated in these components, and the part of  
9       that was for the experts to review the --  
10       what the producer organizations had at the  
11       time as far as humane handling of animals.  
12       So their role was to review it, to lay that  
13       against the scientific consensus at the time.  
14       They were all well known, some world  
15       renowned, specific expertise for each species  
16       and they would review what the procedures  
17       were that each producer group was using as  
18       far as handling your animals, and they would  
19       make recommendations in some cases for ways  
20       to enhance or improve that.

21           Q.       Did FMI and its members rely on  
22       that review by the animal welfare expert  
23       panel?

24           A.       I'm not sure I understand your  
25       use of the word "rely."

1

2 members?

3 A. Through the communications

4 system that I described, yes. Our weekly

5 mailings.

6 Q. Did you draft these reports as

7 part of your regular business as senior vice

8 president of FMI?

9 A. Yes.

10 Q. And were these reports kept in

11 the ordinary course of FMI's business?

12 A. I'm sorry, what did you say?

13 Q. Were these reports kept in the

14 normal course of FMI's business?

15 A. Yes.

16 Q. I'd like to direct your

17 attention to the one that has been marked as

18 Brown-19. This is the June 2002 report. Do

19 you see that?

20 A. Yes.

21 Q. On the first page it reads,

22 second paragraph, "Some recommendations

23 contained within this report have economic

24 implications. Some require an implementation

25 timetable because they cannot be accomplished

190

1

2 immediately."

3 What economic implications were

4 you referring to there?

5 A. Some of the recommendations of

6 the scientific experts would have required

7 changes in housing or other structural

8 changes as far as the producers were

9 concerned and it would have had an economic

10 impact from the standpoint of cost of

11 changes.

12 Q. So they would have increased

13 the cost?

14 A. I don't know about that.

15 Increased the cost of what?

16 Q. I'm sorry, you said "from the

17 standpoint of cost of changes." You mean

18 they would have had a cost associated with

19 making those changes?

20 A. Certainly if they had to get

21 new cages, you know, new -- or housing,

22 change housing. Those kinds of things would

23 have incurred some cost on the part of the

24 producer.

25 Q. What did you mean when you

1  
2 wrote, "Some require an implementation  
3 timetable because they cannot be accomplished  
4 immediately"?

5 A. Well, you certainly couldn't  
6 follow the instructions of PETA who thought  
7 everything could be done within a couple of  
8 weeks. So some of these were complicated;  
9 for example, changing anything that has to do  
10 with housing requirements would take some  
11 time.

12 Q. Were these two issues that you  
13 identified on the first page of this report  
14 unique to the guidelines for egg laying hens?

15 A. No.

16 Q. Did they also apply to other  
17 industry guidelines that FMI was reviewing?

18 A. As far as animal welfare for  
19 other species?

20 Q. Yes.

21 A. Yes. This report is about all  
22 of the species. It's not just about the egg  
23 laying hens.

24 Q. Can you turn to the page that  
25 is marked FMI-17. At the top it's entitled,

1

2 "THE GUIDELINES," and towards the bottom

3 there's a heading for "Laying Hens."

4 A. Yes.

5 Q. I want to focus on the laying

6 hens section. The first sentence reads, "FMI

7 and NCCR recommended to their members the

8 2002 guidelines of the United Egg

9 Producers...for use with their suppliers of

10 eggs and egg products."

11 A. Yes.

12 Q. Is that an accurate statement?

13 A. We recommended them as best  
14 practices, and if they wanted to voluntarily  
15 use that individually with their suppliers,  
16 that was the intent of that sentence.

17 Q. And at this point in time when  
18 this recommendation was made, that was  
19 following the meetings that FMI had had with  
20 UEP to identify and address the gaps that had  
21 been identified by FMI's animal welfare  
22 experts. Correct?

23 A. Yes. But not all of the gaps  
24 had been dealt with.

25 Q. Let's look at page 18. The

1

2 conversations that they would have had  
3 individually with their own suppliers if they  
4 decided to do that.

5 Q. In general terms, what was --

6 A. To my knowledge anyway. As far  
7 as I know.

8 Q. In general terms, what was the  
9 goal of FMI's membership in initiating this  
10 process with respect to animal welfare?

11 A. The primary goal, because they  
12 knew that consumers were looking to them --  
13 the retailer is very visible and very  
14 accessible to the general public. There is  
15 no way that really they can run and hide.  
16 People are in their stores every day and they  
17 hear from their customers on a daily basis  
18 about what it is they like and what they  
19 don't like. When issues become priority  
20 issues because of media and other public  
21 attention to it, the retailer hears about it,  
22 and within that context, the retailer's goal  
23 with animal welfare was to assure that  
24 animals in the agriculture system used as  
25 food would be raised, transported and

1

2 processed in a safe manner that was free from  
3 abuse and neglect.

4 Q. And in these meetings that you  
5 had with UEP and UEP membership, did you ever  
6 represent that you were communicating  
7 specific messages from specific UEP  
8 members -- I'm sorry, from specific FMI  
9 members?

10 A. No. We talked about it from  
11 the standpoint of the royal we. We as the  
12 retailer of the association representing the  
13 retail industry, here is our policy and  
14 program developed and approved by our Board.  
15 This was the basis of our conversations with  
16 everybody on the issue.

17 Q. And let's use Kroger as an  
18 example. Did you ever say anything in these  
19 meetings that would have given the impression  
20 that you were speaking for Kroger?

21 A. We always spoke on behalf of  
22 the industry in general and our members as a  
23 group. If an individual member for some  
24 reason wanted to come to a meeting, I don't  
25 recall Kroger ever doing that, then that was

1

2 A. I see that paragraph.

3 Q. And then below that it says,

4 "New construction will be required to avoid  
5 this market disruption."

6 A. I see that sentence.

7 Q. Would it have changed your  
8 perceptions about the UEP program if you knew  
9 that UEP would encourage members not to build  
10 new houses to replace the displaced hens?

11 MS. SUMNER: Objection to form.

12 Lacks foundation.

13 THE WITNESS: Again, our focus  
14 was on the humane handling of animals.

15 Space allocation was a significant  
16 issue when it came to egg laying hens.

17 The system needed to be improved and  
18 it was the feeling of our scientific  
19 committee, some of whom sat on the UEP  
20 Scientific Committee, although we  
21 didn't have discussions back and forth  
22 about the committee meetings, that  
23 they needed to shorten their time  
24 frame. That's basically it.

25 BY MR. RANDALL: